

## REMARKS

Claims 18-35 are pending.

### **Prior Art Rejections:**

In responding to the Examiner's prior art rejections, Applicant here only justifies the patentability of the independent claims (claim 18, 21, and 31). As the Examiner will appreciate, should these independent claims be patentable over the prior art, narrower dependent claims would also necessarily be patentable. Accordingly, Applicant does not separately discuss the patentability of the dependent claims, although it reserves the right to do so at a later time if necessary.

Claims 18, 21, and 31 have been rejected as obvious (35 U.S.C. § 103) by USP 6,240,316 ("Richmond") in view of USP 6,195,585 ("Karunasiri").

Claims 18, 21, and 31 as amended recite that the electronic subassembly "measures a voltage *of the rechargeable power source* during recharging of the rechargeable power source via an external charging field, . . . wherein the measured voltage is measured when no stimulation is being provided by the electronic subassembly." See Applicant's Specification as published at ¶ [0091] for support.

The Examiner cites to different portions of Karunasiri in an attempt to show disclosure of this claimed concept. First, the Examiner notes that the processor 46 (Fig. 1A) inside the ICS implant monitors the rectified voltage applied to the regulator 44 which powers the processor, and transmits this value outside of the implant. See Office Action at 4; col. 6, ll. 25-49. However, further reading shows that this occurs *only during periods of actual stimulation*:

"In accordance with the teachings of the present invention, other information, in addition to the voltages within the ICS 12, may be monitored and telemetered back to the WP 16 or PC attached to the WP 16. . . . For example, a stapedius response detected through a stapedius electrode *in response to an applied stimulus of a known magnitude could be used to guide the adjustment of the level (magnitude) of the next applied stimulus*. In this manner, the *applied stimuli may be dynamically set to an appropriate level in order to elicit a desired stapedius response*. Such other information may thus be used to provide feedback information to the processor circuits within the WP 16, or elsewhere (e.g., within the ICS processor 46), so that appropriate adjustments can be made, e.g., to *dynamically adjust the amplitude of the stimulus signal that is to be applied to a given patient*. Further, such information may provide useful feedback during a fitting session when the ICS is first implanted within a patient, or when

adjustments are made thereto after implant, so that the patient is able to obtain maximum benefit from the operation of the system. . . .

Karunasiri, col. 6, l. 50 to col. 7, l. 7. To reiterate, Karunasiri's measurements occur "dynamically," i.e., during an "applied stimulus."

Apparently understanding that this portion of Karunasiri fails to meet the "no stimulation" limitation, the Examiner cites to column 13, l. 65 to col. 14, l. 2 in an attempt to show measurements during a time of no stimulation. See Office Action at 4. But this cited excerpt, referring to Figure 4, has nothing to do with measuring the voltage of the rechargeable power source during recharging of the rechargeable power source. Instead, the measurements referenced by the Examiner are not of Karunasiri's *rechargeable power source*; instead they are of Karunasiri's *stimulation electrodes*. (Indeed, Karunasiri doesn't even contain a rechargeable power source within the implant): "The response signal that is sensed includes both the artifact associated with the stimulus and the evoked response. *Monitoring of the sensed electrodes* continues for about 5 ms after each stimulus." Col. 13, l. 65 to col. 14, l. 2. Therefore, even if one accepts the proposition that the period between pulses in Figure 4 comprises a "no stimulation" period, that fact remains that the measurement being made at this portion of Karunasiri is not of the rechargeable power source or anything akin thereto. This passage is thus not relevant. Instead, the earlier passage quoted above was quite precise that Karunasiri monitored his rectified voltage only during periods of actual stimulation.

In short, Karunasiri does not disclose the limitation in claims 18, 21, and 31 that "the measured voltage [of the rechargeable power source] is measured when no stimulation is being provided by the electronic subassembly." Because the Examiner appears to accept that this limitation is likewise not disclosed in Richmond, the result is that neither reference discloses this concept. Therefore, even when considered together, these references cannot render claims 18, 21, and 31 obvious. See MPEP § 2143.03 (references in combination cannot establish obviousness if combination is missing a claim limitation).

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Based on the above remarks, Applicant respectfully submits that pending claims 18-35 are allowable, and requests that a Notice of Allowance issue for these claims.

Respectfully submitted,

/ TGL /

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